

1 SENATE BILL 437

2 **49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

3 INTRODUCED BY

4 Linda M. Lopez

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10 AN ACT

11 RELATING TO COUNTY DETENTION FACILITIES; PROVIDING FOR THE
12 CREATION OF A COUNTY DETENTION FACILITY POPULATION CONTROL
13 COMMISSION; AUTHORIZING MEASURES TO RELIEVE OVERCROWDING;
14 ENACTING THE COUNTY DETENTION FACILITY POPULATION CONTROL ACT.

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16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 Section 1. SHORT TITLE.--This act may be cited as the
18 "County Detention Facility Population Control Act".

19 Section 2. DEFINITIONS.--As used in the County Detention
20 Facility Population Control Act:

21 A. "commission" means the county detention facility
22 population control commission;

23 B. "jail administrator" means the person hired by a
24 county who supervises the operation of the jail and reports
25 directly to the county manager or to the board of county

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1 commissioners and may include the sheriff of the county;

2 C. "nonviolent offender" means:

3 (1) a person charged or convicted for the
4 commission of a nonviolent offense, as that term is defined in
5 Section 33-2-34 NMSA 1978; or

6 (2) a person incarcerated for violating the
7 conditions of probation or parole due to the use or possession
8 of a controlled substance and whose original conviction was for
9 the commission of a nonviolent offense; and

10 D. "operational capacity" means the number of
11 inmates that can be accommodated in a detention facility based
12 on bed space, individual cells, areas designed for the housing
13 of inmates, the facility's staffing level and existing programs
14 and services.

15 Section 3. OPERATIONAL CAPACITY ESTABLISHED
16 ANNUALLY.--The board of county commissioners shall establish
17 annually, by resolution, the operational capacity for each
18 county detention facility.

19 Section 4. COUNTY DETENTION FACILITY POPULATION CONTROL
20 COMMISSION--MEMBERS--MEETINGS--IMMUNITY.--

21 A. A board of county commissioners may create a
22 "county detention facility population control commission" to
23 address instances of overcrowding in a county detention
24 facility. The commission shall convene quarterly to review
25 population data and data regarding the use of alternative

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1 incarceration programs and the use or anticipated use of other
2 population control mechanisms.

3 B. The commission shall be composed of the
4 following five members:

5 (1) the jail administrator, who shall serve as
6 chair of the commission;

7 (2) two public officials or private citizens
8 appointed by the board of county commissioners;

9 (3) a public official or private citizen
10 appointed by the chief judge of the district court; and

11 (4) a public official or private citizen
12 appointed by the chief judge of the metropolitan or magistrate
13 court.

14 C. A majority of the members of the commission
15 constitutes a quorum for the transaction of commission
16 business.

17 D. The appointed members of the commission shall
18 serve until excused by the appointing authority. A vacancy on
19 the commission shall be filled by the appointing authority that
20 made the original appointment.

21 E. Members of the commission are entitled to
22 compensation pursuant to the provisions of the Per Diem and
23 Mileage Act but shall receive no other perquisite, compensation
24 or allowance for service on the commission.

25 F. Members of the commission shall be immune from

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1 liability in civil actions for the performance of their duties
2 pursuant to the County Detention Facility Population Control
3 Act, provided that the members perform their duties in good
4 faith.

5 Section 5. OVERCROWDING--POPULATION CONTROL MEASURES--
6 PROCEDURES.--

7 A. When the inmate population of a county detention
8 facility exceeds ninety percent of the operational capacity for
9 that facility for a period of ninety consecutive days, the jail
10 administrator shall engage in all lawful and professionally
11 appropriate efforts to reduce the inmate population to ninety
12 percent or less of operational capacity, including providing
13 notice to the corrections department that the county detention
14 facility is in excess of ninety percent of the operational
15 capacity and providing a list to the department of all
16 convicted felons in the county detention facility. Within
17 thirty days of the notice, the corrections department shall
18 remove all convicted felons from the county detention facility.

19 B. If the inmate population of a county detention
20 facility is in excess of ninety percent of operational capacity
21 after ninety consecutive days, the jail administrator shall
22 notify the commission, the district court, the metropolitan
23 court or municipal and magistrate courts, the district
24 attorney, the public defender, the secretary of corrections and
25 local law enforcement agencies and shall include in the

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1 notification a list of the nonviolent offenders in the
2 facility.

3 C. The commission shall convene within ten days of
4 receipt of the notice provided pursuant to Subsection B of this
5 section to consider the release of the nonviolent offenders on
6 the list provided by the jail administrator. The commission
7 may provide for the early release of nonviolent offenders;
8 provided that a nonviolent offender shall not be released if:

9 (1) information that classifies the offender
10 as a nonviolent offender is discovered to be materially
11 inaccurate;

12 (2) the nonviolent offender is convicted of a
13 crime while incarcerated; or

14 (3) the nonviolent offender fails a drug
15 screening test within ten days of the offender's scheduled
16 release.

17 Section 6. EFFECTIVE DATE.--The effective date of the
18 provisions of this act is July 1, 2009.

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